

Office of Personnel Management

§ 752.406

require reasonable accommodation of a qualified employee who is handicapped.

(d) *Exceptions.* (1) Section 7513(b) of title 5 of the United States Code authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension (including indefinite suspension). The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days. When the circumstances require that the employee be kept away from the worksite, the agency may place him or her in a nonduty status with pay for such time as is necessary to effect the action.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(e) *Representation.* Section 7513(b)(3) of title 5 of the United States Code provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Agency decision.* In arriving at its decision, the agency shall not consider any reasons for action other than those specified in the notice of proposed action. It shall consider any answer of the employee and/or his or her representative made to a designated official and any medical documentation furnished under paragraph (c) of this section. The agency shall deliver the

notice of decision to the employee at or before the time the action will be effective, and advise the employee of appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7513(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral answer.

(h) *Applications for disability retirement.* Section 831.501(d) of this chapter provides that an employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. Section 831.1203 of this chapter sets forth the basis under which an agency shall file an application for disability retirement on behalf of an employee.

[45 FR 46778, July 11, 1980, as amended at 48 FR 19349, Apr. 29, 1983; 48 FR 45526, Oct. 6, 1983; 49 FR 1330, Jan. 11, 1984; 53 FR 21623, June 9, 1988]

§ 752.405 Appeal and grievance rights.

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) *Grievance rights.* As provided at 5 U.S.C. 7121(e)(1), if a matter covered by this subpart falls within the coverage of an applicable negotiated grievance procedure, and employee may elect to file a grievance under that procedure or appeal to the Merit Systems Protection Board under 5 U.S.C. 7701, but not both. 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a matter under this subpart through the negotiated grievance procedure.

[45 FR 46778, July 11, 1980, as amended at 53 FR 21624, June 9, 1988]

§ 752.406 Agency records.

The agency shall maintain copies of the items specified in 5 U.S.C. 7513(e) and shall furnish them upon request as required by that subsection.